

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

EIDO HASSAM AL-NAHHAS, a/k/a
 MOHAMMAD AL-NAHHAS, ON BEHALF
 OF PLAINTIFF AND THE CLASS MEMBERS
 DESCRIBED BELOW,

Plaintiff,

vs.

ROSEBUD LENDING LZO d/b/a
 ZOCALOANS; 777 PARTNERS LLC;
 TACTICAL MARKETING PARTNERS, LLC;
 JOHN DOES 1-20,

Defendants.

3:23-mc-00012

ORDER MODIFYING SUBPOENA DUCES
 TECUM

On April 19, 2023, BankWest, Inc. (BankWest) filed a Motion to Quash or Modify Subpoena Duces Tecum after counsel for Plaintiff had served on BankWest a subpoena to produce bank records of sixteen listed entities or trade names. Doc. 1. BankWest had obtained an extension from Plaintiff to April 21, 2023, to respond to the subpoena duces tecum. BankWest's motion raised an argument that this Court is required to quash or modify the subpoena under Federal Rule of Civil Procedure 45(d)(3)(A)(iii) as it required "disclosure of privileged or other protected matter, if no exception or waiver applies" or alternatively that this Court may quash or modify the subpoena under Rule 45(d)(3)(B)(i) as it sought "other confidential . . . or commercial information." BankWest has implemented and adheres by privacy policies protecting its customers' banking records.

This Court entered an order on April 21, 2023, setting a hearing for May 1 and enlarging the time for BankWest to comply with the subpoena until after the hearing. Doc. 6. At the hearing on May 1, 2023, this Court heard from BankWest and Plaintiff, learning that BankWest has records regarding only three of the entities—Rosebud Lending, Rosebud Lending DRT, and Rosebud Lending RQC. Plaintiff's counsel provided this Court some background on the case in the Northern District of Illinois from which the subpoena issued, and this Court now is aware that an Agreed Upon Confidentiality Order exists in that case. Hussam Al-Nahhas v. Rosebud Lending LZO, et al., No. 1:22-cv-00750 at Doc. 53 (N.D. Ill. Mar. 9, 2023).

Finding the objection from BankWest to fit under Rule 45(d)(3)(B)(i) and concluding that there is no undue burden for production by BankWest of those bank records, this Court will modify rather than quash the subpoena duces tecum to extend the time to respond to May 10, 2023, to direct that BankWest honor its privacy policies to the extent possible by marking documents produced as CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER, and to require a written signed statement from a BankWest official to confirm that it has no records regarding the 13 other entities listed on Exhibit A to the subpoena duces tecum. Therefore it is

ORDERED that BankWest's motion to quash or modify subpoena, Doc. 1, is granted in part and denied in part as set forth herein.

DATED this 2nd day of May, 2023.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE